

Senate Engrossed House Bill

**FILED**

**KEN BENNETT**

**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 99

# **HOUSE BILL 2173**

AN ACT

AMENDING SECTIONS 12-1365, 32-1124, 32-1154 AND 32-1158, ARIZONA REVISED  
STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1365, Arizona Revised Statutes, is amended to  
3 read:

4 12-1365. Notification; right to file a complaint with the  
5 registrar of contractors

6 A. A written contract for the sale of a newly constructed dwelling  
7 between a buyer of a newly constructed dwelling and the seller responsible  
8 for the original construction of the dwelling shall contain, or provide  
9 separate notice of, the following provision:

10 Under Arizona Revised Statutes section 32-1155, a buyer of a  
11 dwelling has the right to file a written complaint against the  
12 homebuilder with the Arizona registrar of contractors within two  
13 years ~~of~~ AFTER THE CLOSE OF ESCROW OR ACTUAL OCCUPANCY,  
14 WHICHEVER OCCURS FIRST, FOR the commission of an act in  
15 violation of Arizona Revised Statutes section 32-1154,  
16 subsection A.

17 B. The notice required in subsection A of this section shall be  
18 prominently displayed and appear in at least ten point bold type.

19 C. The buyer of the dwelling is not deemed to have received the notice  
20 required pursuant to subsection A of this section,-- unless the buyer initials  
21 the notice provision.

22 Sec. 2. Section 32-1124, Arizona Revised Statutes, is amended to read:  
23 32-1124. Issuance and display of license; suspension

24 A. Upon receipt by the registrar of the fee required by this chapter  
25 and an application furnishing complete information as required by the  
26 registrar, the registrar shall notify the applicant within sixty days from  
27 the date of the filing of a complete application of the action taken on the  
28 application, and if the registrar determines that the applicant is qualified  
29 to hold a license in accordance with this chapter, the registrar shall issue  
30 a license to the applicant permitting the applicant to engage in business as  
31 a contractor under the terms of this chapter.

32 B. Licenses issued under this chapter and any renewals shall be signed  
33 by the registrar or the registrar's designated representative and by the  
34 licensee. The license shall be nontransferable, and satisfactory evidence of  
35 possession shall be exhibited by the licensee upon demand. The license  
36 number appearing on any licenses held by the licensee shall be preceded by  
37 the acronym "ROC" and shall be posted in a conspicuous place on premises  
38 where any work is being performed, shall be placed on all written bids  
39 submitted by the licensee and shall be placed on all BROADCAST, PUBLISHED,  
40 INTERNET OR BILLBOARD advertising, letterheads and other documents used by  
41 the licensee TO CORRESPOND WITH THE LICENSEE'S CUSTOMERS OR POTENTIAL  
42 CUSTOMERS in the conduct of business regulated by this chapter. A violation  
43 of this subsection relating to posting and placement of license numbers shall  
44 be, at the discretion of the registrar, grounds for disciplinary action  
45 pursuant to section 32-1154, subsection A, paragraph 13, but not grounds for

1 preventing the award of a contract, voiding an awarded contract, or any other  
2 claim or defense against the licensee. For the purposes of this subsection,  
3 advertising does not include a trade association directory listing that is  
4 distributed solely to the members of the association and not to the general  
5 public.

6 C. If an application for a license is denied for any reason provided  
7 in this chapter, the application fee paid by the applicant shall be forfeited  
8 and deposited pursuant to section 32-1107. A reapplication for a license  
9 shall be accompanied by the fee fixed by this chapter.

10 D. On issuance or renewal of a license, the registrar, at the request  
11 of a licensee, shall issue a single license certificate showing all  
12 contracting licenses held by the licensee which are currently in good  
13 standing and their dates of expiration.

14 E. The registrar may establish procedures to allow a licensee to  
15 establish a common expiration or renewal date for all licenses issued to the  
16 licensee and may provide for proration of license fees for that purpose.

17 F. The registrar shall suspend by operation of law a license issued  
18 under this chapter if any of the following occurs:

19 1. The licensed entity is dissolved. The dissolution of the licensed  
20 entity includes the death of a sole owner, a change to the partnership by  
21 either adding or removing a partner, the revocation or dissolution of  
22 corporate authority or the dissolution of a limited liability company or  
23 limited liability partnership.

24 2. The licensed entity does not have authority to do business in this  
25 state.

26 3. The license is obtained or renewed with an insufficient funds  
27 check. The license remains suspended until the registrar receives a  
28 certified check, a money order or cash as payment for the license fees and  
29 assessments.

30 Sec. 3. Section 32-1154, Arizona Revised Statutes, is amended to read:

31 32-1154. Grounds for suspension or revocation of license;  
32 continuing jurisdiction; civil penalty; recovery  
33 fund award; summary suspension

34 A. The holder of a license or any person listed on a license pursuant  
35 to this chapter shall not commit any of the following acts or omissions:

36 1. Abandonment of a contract or refusal to perform after submitting a  
37 bid on work without legal excuse for the abandonment or refusal.

38 2. Departure from or disregard of plans or specifications or any  
39 building codes of the state or any political subdivision of the state in any  
40 material respect which is prejudicial to another without consent of the owner  
41 or the owner's duly authorized representative and without the consent of the  
42 person entitled to have the particular construction project or operation  
43 completed in accordance with such plans and specifications and code.

44 3. Violation of any rule adopted by the registrar.

- 1           4. Failure to comply with the statutes or rules governing social  
2 security, workers' compensation or unemployment insurance.
- 3           5. Failure to pay income taxes, withholding taxes or any tax imposed  
4 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the  
5 licensed business.
- 6           6. Misrepresentation of a material fact by the applicant in obtaining  
7 a license.
- 8           7. The doing of a ~~wrongful~~ or fraudulent act by the licensee as a  
9 contractor resulting in another person being substantially injured.
- 10          8. Conviction of a felony.
- 11          9. Failure in a material respect by the licensee to complete a  
12 construction project or operation for the price stated in the contract, or in  
13 any modification of the contract.
- 14          10. Aiding or abetting a licensed or unlicensed person to evade this  
15 chapter, knowingly or recklessly combining or conspiring with a licensed or  
16 unlicensed person, allowing one's license to be used by a licensed or  
17 unlicensed person or acting as agent, partner, associate or otherwise of a  
18 licensed or unlicensed person with intent to evade this chapter.
- 19          11. Failure by a licensee or agent or official of a licensee to pay  
20 monies in excess of seven hundred fifty dollars when due for materials or  
21 services rendered in connection with the licensee's operations as a  
22 contractor when the licensee has the capacity to pay or, if the licensee  
23 lacks the capacity to pay, when the licensee has received sufficient monies  
24 as payment for the particular construction work project or operation for  
25 which the services or materials were rendered or purchased.
- 26          12. Failure of a contractor to comply with any safety or labor laws or  
27 codes of the federal government, state or political subdivisions of the  
28 state.
- 29          13. Failure in any material respect to comply with this chapter.
- 30          14. Knowingly entering into a contract with a contractor for work to be  
31 performed for which a license is required with a person not duly licensed in  
32 the required classification.
- 33          15. Acting in the capacity of a contractor under any license issued  
34 under this chapter in a name other than as set forth upon the license.
- 35          16. False, misleading or deceptive advertising whereby any member of  
36 the public may be misled and injured.
- 37          17. Knowingly contracting beyond the scope of the license or licenses  
38 of the licensee.
- 39          18. Contracting or offering to contract or submitting a bid while the  
40 license is under suspension or while the license is on inactive status.
- 41          19. Failure to notify the registrar in writing within a period of  
42 fifteen days of any disassociation of the person who qualified for the  
43 license. Such licensee shall have sixty days from the date of such  
44 disassociation to qualify through another person.

1       20. Subsequent discovery of facts which if known at the time of  
2 issuance of a license or the renewal of a license would have been grounds to  
3 deny the issuance or renewal of a license.

4       21. Having a person named on the license who is named on any other  
5 license in this state or in another state which is under suspension or  
6 revocation unless the prior revocation was based solely on a violation of  
7 this paragraph.

8       22. Continuing a new single family residential construction project  
9 with actual knowledge that a pretreatment wood-destroying pests or organisms  
10 application was either:

11       (a) Not performed at the required location.

12       (b) Performed in a manner inconsistent with label requirements, state  
13 law or rules.

14       23. Failure to take appropriate corrective action to comply with this  
15 chapter or with rules adopted pursuant to this chapter without valid  
16 justification within a reasonable period of time after receiving a written  
17 directive from the registrar. The written directive shall set forth the time  
18 within which the contractor is to complete the remedial action. The time  
19 permitted for compliance shall not be less than fifteen days from the date of  
20 issuance of the directive. A license shall not be revoked or suspended nor  
21 shall any other penalty be imposed for a violation of this paragraph until  
22 after a hearing has been held.

23       24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or  
24 otherwise intimidate any contractor or materialman from serving a preliminary  
25 notice pursuant to section 33-992.01.

26       B. The registrar may on the registrar's own motion, and shall on the  
27 written complaint of any owner or contractor that is a party to a  
28 construction contract or a person who suffers a material loss or injury as a  
29 result of a contractor's failure to perform work in a professional and  
30 workmanlike manner or in accordance with any applicable building codes and  
31 professional industry standards, investigate the acts of any contractor  
32 within this state and may temporarily suspend, with or without imposition of  
33 specific conditions in addition to increased surety bond or cash deposit  
34 requirements, or permanently revoke any or all licenses issued under this  
35 chapter if the holder of the license issued pursuant to this chapter is  
36 guilty of or commits any of the acts or omissions set forth in subsection A  
37 of this section. For the purposes of this subsection:

38       1. "Construction contract" means a written or oral agreement relating  
39 to the construction, alteration, repair, maintenance, moving or demolition of  
40 any building, structure or improvement or relating to the contractor's  
41 excavation of or other development or improvement to land if the registrar  
42 investigates the contractor's actions under this subsection.

43       2. "Owner" means any person, firm, partnership, corporation,  
44 association or other organization, or a combination of any of them, that  
45 causes a building, structure or improvement to be constructed, altered,

1 repaired, maintained, moved or demolished or that causes land to be excavated  
2 or otherwise developed or improved, whether the interest or estate of the  
3 person is in fee, as vendee under a contract to purchase, as lessee or  
4 another interest or estate less than fee, pursuant to a construction  
5 contract.

6 C. The expiration, cancellation, suspension or revocation of a license  
7 by operation of law or by decision and order of the registrar or a court of  
8 law or the voluntary surrender of a license by a licensee shall not deprive  
9 the registrar of jurisdiction to proceed with any investigation of or action  
10 or disciplinary proceeding against such licensee, or to render a decision  
11 suspending or revoking such a license, or denying the renewal or right of  
12 renewal of such license.

13 D. The registrar may impose a civil penalty of not to exceed five  
14 hundred dollars on a contractor for each violation of subsection A, paragraph  
15 23 of this section. Civil penalties collected pursuant to this subsection  
16 shall be deposited in the residential contractors' recovery fund. The  
17 failure by the licensee to pay any civil penalty imposed under this  
18 subsection results in the automatic revocation of the license thirty days  
19 after the effective date of the order providing for the civil penalty. No  
20 future license may be issued to an entity consisting of a person associated  
21 with the contractor, as defined in section 32-1101, subsection A, paragraph  
22 5, unless payment of any outstanding civil penalty is tendered.

23 E. The registrar shall impose a civil penalty of not to exceed one  
24 thousand dollars on a contractor for each violation of subsection A,  
25 paragraph 18 of this section. Civil penalties collected pursuant to this  
26 subsection shall be deposited in the residential contractors' recovery fund.  
27 The failure by the licensee to pay any civil penalty imposed under this  
28 subsection results in the automatic permanent revocation of the license  
29 thirty days after the effective date of the order providing for the civil  
30 penalty. No future license may be issued to an entity consisting of a person  
31 associated with the contractor, as defined in section 32-1101, subsection A,  
32 paragraph 5, unless payment of any outstanding civil penalty is tendered.

33 F. Notwithstanding any other provisions in this chapter, if a  
34 contractor's license has been revoked or has been suspended as a result of an  
35 order to remedy a violation of this chapter, and the contractor refuses or is  
36 unable to comply with the order of the registrar to remedy the violation, the  
37 registrar may order payment from the residential contractors' recovery fund  
38 to remedy the violation. The registrar shall serve the contractor with a  
39 notice setting forth the amount claimed or to be awarded. If the contractor  
40 contests the amount or propriety of the payment, the contractor shall respond  
41 within ten days of the date of service by requesting a hearing to determine  
42 the amount or propriety of the payment. Failure by the contractor to respond  
43 in writing within ten days of the date of service shall be deemed a waiver by  
44 the contractor of the right to contest the amount claimed or to be awarded.  
45 Service may be made by personal service to the contractor or by mailing a

1 copy of the notice by registered mail with postage prepaid to the  
2 contractor's latest address of record on file in the registrar's office. If  
3 service is made by registered mail, it is effective five days after the  
4 notice is mailed. Except as provided in section 41-1092.08, subsection H,  
5 the contractor or injured person may seek judicial review of the registrar's  
6 final award pursuant to title 12, chapter 7, article 6.

7 Sec. 4. Section 32-1158, Arizona Revised Statutes, is amended to read:

8 32-1158. Minimum elements of a contract

9 A. From and after December 31, 1992 until December 31, 2007, any  
10 contract in an amount of more than one thousand dollars and less than one  
11 hundred fifty thousand dollars entered into between a contractor and the  
12 owner of a property to be improved shall contain in writing at least the  
13 following information:

14 1. The name of the contractor and the contractor's business address  
15 and license number.

16 2. The name and mailing address of the owner and the jobsite address  
17 or legal description.

18 3. The date the parties entered into the contract.

19 4. The estimated date of completion of all work to be performed under  
20 the contract.

21 5. A description of the work to be performed under the contract.

22 6. The total dollar amount to be paid to the contractor by the owner  
23 for all work to be performed under the contract, including all applicable  
24 taxes.

25 7. The dollar amount of any advance deposit paid or scheduled to be  
26 paid to the contractor by the owner.

27 8. The dollar amount of any progress payment and the stage of  
28 construction at which the contractor will be entitled to collect progress  
29 payments during the course of construction under the contract.

30 B. From and after December 31, 2007, any contract in an amount of more  
31 than one thousand dollars entered into between a contractor and the owner of  
32 a property to be improved shall contain in writing at least the following  
33 information:

34 1. The name of the contractor and the contractor's business address  
35 and license number.

36 2. The name and mailing address of the owner and the jobsite address  
37 or legal description.

38 3. The date the parties entered into the contract.

39 4. The estimated date of completion of all work to be performed under  
40 the contract.

41 5. A description of the work to be performed under the contract.

42 6. The total dollar amount to be paid to the contractor by the owner  
43 for all work to be performed under the contract, including all applicable  
44 taxes.

1        7. The dollar amount of any advance deposit paid or scheduled to be  
2 paid to the contractor by the owner.

3        8. The dollar amount of any progress payment and the stage of  
4 construction at which the contractor will be entitled to collect progress  
5 payments during the course of construction under the contract.

6        9. That the property owner has the right to file a written complaint  
7 with the registrar for an alleged violation of section 32-1154, subsection A.  
8 The contract shall contain the registrar's telephone number and website  
9 address and shall state that complaints must be made within the applicable  
10 time period as set forth in section 32-1155, subsection A. The information  
11 in this paragraph must be prominently displayed in the contract in AT LEAST  
12 ten point bold type, and the contract shall be signed by the property owner  
13 and the contractor or the contractor's designated representative. This  
14 paragraph does not apply to a person who is subject to and complies with  
15 section 12-1365.

16        C. At the time of signing a contract the owner shall be provided a  
17 legible copy of all documents signed and a written and signed receipt for and  
18 in the true amount of any cash paid to the contractor by the owner.

19        D. The requirements of this section shall not constitute prerequisites  
20 to the formation or enforcement of a contract. Failure to comply with the  
21 requirements of this section shall not constitute a defense by either party  
22 to an action for compensation, damages, breach, enforcement or other cause of  
23 action based on the contract.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.